

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTY FOURTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION NO : 6138 of 2005

Between:

1. M/s. Indian Granites, Situated at Martur Prakasam District, rep by Managing Prartner, B. Nageswari Devi
2. B. Gangi Reddy S/o Ram Reddy
R/o Hyderabad

... PETITIONERS

AND

- 1 The Regional Provident Fund Commissioner, EPF Organization, Guntur
- 2 Assistant Providetn Fund Commissioner, Employees Provident Fund, Sub-Divisional Officer, III Lane Krishna Nagar, Guntur

..RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue Writ or direction particularly in the nature of mandamus or any other appropriate Writ, declaring the proceedings in the 2nd respondent in AP/40273/7A/SRO/Gnt/C-II/Comp-II/05/2551, dated 19-1-2005 and also the consequential proceedings in AP/SRO/GNT/Recy.Cell/40273/2005, dt 11-3-2005 as illegal void, arbitrary and violation of principles of natural justice.

Counsel for the Petitioners: MR.V.R.AVULA

Counsel for the Respondents: Mr. CH.LAXMI KUMARI. S.C. FOR PF.

The Court at the stage of admission made the following:

ORDER:

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This writ petition is filed aggrieved by the order dated 19-01-2005 passed by the second respondent as well as the consequential notice dated 11-03-2005 issued by the Recovery Officer calling upon the petitioners to show cause as to why they should not be committed to the civil prison in execution of the recovery certificate No.28/2005 dated 22-02-2005 forwarded by the authorized officer, Sub-Regional Office, Guntur.

It is not in dispute that the proceedings dated 19-01-2005 were issued by the second respondent under Section 7-A of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (for short 'the Act') thereby determining the liability of the petitioner for payment of provident fund dues for the period from April, 2003 to November, 2004. The case of the petitioners is that the said order is arbitrary and illegal since, the provisions of the Act cannot be made applicable to the petitioners establishment.

Learned counsel for the petitioners contended that the impugned determination was made without application of mind to the facts and circumstances of the case and therefore the said order passed under Section 7-A of the Act is *ex facie* illegal and liable to be set aside.

However, the learned Standing Counsel appearing for the respondents, at the outset, raised an objection stating that against the said order dated 19-01-2005 passed under Section 7-A of the Act an alternative remedy of appeal is available under Section 7-I of the Act and without exhausting the said remedy the petitioners cannot maintain this writ petition. It is also submitted that the notice dated 11-03-2005 issued by the Recovery Officer being only consequential order does not warrant any interference by this Court.

Having regard to the facts and circumstances of the case and since, admittedly an alternative remedy of appeal is available under Section 7-I of the Act, without expressing any opinion on merits the writ petition is disposed of granting leave and liberty to the petitioners to workout the remedy of appeal against the order dated 19-01-2005 passed under Section 7-A of the Act. It is always open to the petitioners to raise all the contentions including that are raised in this writ petition in the said appeal. If any such appeal is preferred within a period of four weeks from today, the same shall be entertained and appropriate orders be passed in accordance with law. Having regard to the facts and circumstances of the case, there shall be a further direction that no coercive steps shall be taken against the petitioners on the basis of the order passed under Section 7-A of the Act including the impugned notice dated 11-03-2005 subject to the condition that the petitioners deposit 50% of the amount demanded under the Act, within a period of six weeks from today.

The Writ Petition is accordingly disposed of. No order as to costs.

G. ROHINI, J

Dated: 24-03-2005

LSK

ASSISTANT REGISTRAR

To

- 1 The Regional Provident Fund Commissioner, EPF Organization, Guntur
- 2 Assistant Provident Fund Commissioner, Employees Provident Fund, Sub-Divisional Officer, III Lane Krishna Nagar, Guntur
- 3 Two C.D. copies.